

## NOTICES OF FINAL RULEMAKING

Unless exempted by A.R.S. § 41-01995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register. Under the Administrative Procedure Act (A.R.S. § 41-1001et seq.) an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S §§ 41-1013 and 41-1022.

### NOTICE OF FINAL RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 4. DEPARTMENT OF AGRICULTURE

#### PLANT SERVICES DIVISION

#### PREAMBLE

1. Sections Affected R3-4-229 Rulemaking Action: Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 3-107  
Implementing statutes: A.R.S. §§ 3-201.01(A), 3-202, 3-209, and 3-210.
3. The effective date of the rules:  
January 16, 1996
4. A list of all previous notices appearing in the Register addressing the final rule:  
Notice of Rulemaking Docket Opening:  
1 A.A.R. 34, January 27, 1995  
Notice of Proposed Rulemaking:  
1 A.A.R. 1822, October 13, 1995
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Shirley Conard, Rules Specialist  
Address: Department of Agriculture  
1688 West Adams, Room 124  
Phoenix, Arizona 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420
6. An explanation of the rule, including the agency's reasons for initiating the rule:  
The proposed rulemaking will amend the heading of Article 2 by removing "Regulation" and will amend R3-4-229, regulating the shipment of nut trees into Arizona. The amendments will remove outdated and gender-specific terminology, correct a scientific term for the pecan nut casebearer, remove unnecessary verbiage, eliminate the option of destination treatment as a condition for entry into Arizona, add 1 new pest (pecan phylloxera), and add regulated states and counties.  
  
Establishing a quarantine for specific pests requires that Arizona is aware of the pest requirements in other states and the conditions existing because of specific pests. The pest pecan phylloxera has been included in this rule to keep current with adjacent state requirements and to strengthen the pest-free nursery program in the state.  
  
The existing rule lists specific areas which are under quarantine for the nut tree pests. Subsection (B) expands this quarantine area to include the entire United States, except California. By expanding this quarantine area, the state will have more regulatory control over incoming shipments. This added authority will cut down on the trans-shipment problems the Department experiences when unable to require certification for commodities from locations other than the existing infested areas.  
  
Ideally, quarantine regulations are written to keep pests out of the state not to deal with pests once they are here. In the last 5 years, the Department has not received any requests for destination treatment; therefore, by removing the destination treatment from the requirements, the Department can eliminate pests from ever entering the state without creating any disagreement within the industry.

Notices of Final Rulemaking

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

The proposed nut tree pest rule establishes a quarantine for specific pests of hickory, pecan, walnut, and butternut trees and sets up the treatments required for the elimination of these pests. The rule directly affects the Department, nursery owners, and consumers purchasing plants which could be affected by the tree pest.

A. *The Department of Agriculture*

1. **BENEFITS:** The housekeeping changes to the rule create little direct economic impact on this agency other than to set up a rule that is easier to read and which follows accepted format and structure guidelines. This rule extends the economic viability of the pecan industry in Arizona, continues to protect the state's native black walnut population, and strengthens the Department's ability to protect the nursery industry.
2. **COSTS:** The rule will be implemented in the same way as the existing rule. No changes have been made which would create additional costs, administrative or other, for the Department.

B. *Political Subdivision*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rule-making.

C. *Business Directly Affected by the Rulemaking (Nursery Owners)*

1. **BENEFITS:** Adding the new pest requirement will protect the industry from pecan phylloxera and the additional quarantine area ensures that infested trees will not be accepted into the state from newly infested counties.

Before Arizona introduced a quarantine on nut tree pests, growers in Dona Ana, Otero, and Quay Counties, New Mexico, shipped pecan trees into Arizona. Some of these pecan trees were in the dormant stage but many were trees with foliage. When Arizona introduced its current rule in 1986, the treatment methods specifying methyl-bromide and hot water precluded this type of shipment and narrowed the acceptable commodity to bare-root trees. Now that we are amending this rule, the proposed treatment option gives the producer the opportunity to provide a remedy which not only will eliminate the possibility of the pest but would be carried out in a manner specific to that producer's conditions. The new treatment option places the burden of providing the treatment of the producer. The producer would have to provide the Department with efficacy data on the new treatment in order to obtain the Associate Director's approval.

The addition of Dona Ana, Otero, and Quay as quarantined counties should not have a significant impact on consumers or small businesses since pecan trees from Dona Ana, Otero, and Quay counties have been unofficially regulated for more than a year.

Permitting nurseries the opportunity to provide a remedy which will be specific to that producer's conditions may allow the producer to create a less-costly compliance requirement for the nursery and thus reduce the impact on small business.

2. **COSTS:** Producers will be affected by the additional pest requirement. Producers will now be required to eliminate this new pest (pecan phylloxera) if shipping product into Arizona. The costs will be the same for the methyl-bromide or hot water treatments as now being used to treat the existing pests. The methyl-bromide treatment will cost approximately \$550 per shipment. The hot water treatment cost is negligible with the exception of the labor involved. Benefits associated with implementing this rule far outweigh the costs by removing the possibility of nursery commodities from being infested with pests. The rule also increases the positive public relations between the nursery industry and consumers requiring the nursery to supply pest-free nut trees.

No other alternate method was specifically considered which would be less intrusive or less costly. Instead this rule gives each nursery the option of providing their own treatment method for shipping nut trees with foliage, a method which would be specific to the circumstances of each nursery.

No changes to the rule have been made which would create administrative costs for the nursery owners or other small businesses.

D. *Private and Public Employment*

Private and public employment is not directly affected by the implementation and enforcement of this proposed rulemaking.

E. *Consumers and the Public*

1. **BENEFITS:** Consumers will benefit from the addition of pecan phylloxera to the pest list. This addition will assure that they will receive plants that are not infested with that pest. The public will benefit from this rule by the certainty that Arizona's native black walnut population is being protected from the brooming disease.
2. **COSTS:** None

F. *State Revenues*

This rulemaking will have no impact on state revenues.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Quay County, New Mexico, has been added to the list of infested areas in R3-4-229(C)(1). This county, like Dona Ana and Otero, has already been unofficially regulated by the Department for the last 2 years, and excluding Quay County from the proposed rule was an oversight.

10. A summary of the principal comments and the agency response to them:  
None.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
None.
13. Was this rule previously adopted as an emergency rule?  
No.
14. The full text of the rules follows:

### TITLE 3. AGRICULTURE

#### CHAPTER 4. DEPARTMENT OF AGRICULTURE

##### PLANT SERVICES DIVISION

#### ARTICLE 4. QUARANTINE REGULATIONS

Section

R3-4-229. Nut Trees Pests

#### ARTICLE 4. QUARANTINE REGULATIONS

R3-4-229. Nut Tree Pests

**A.** Notice of quarantine: It has been determined that Pecan nut casebearer, *Aerobasis caryae* (Grote), Pecan leaf casebearer, *Aerobasis juglandis* (LeB.) and brooming disease of walnut are dangerous plant pests not known to occur in the state of Arizona; that these pests are a serious threat to the nut tree industry and native black walnuts of the state of Arizona. In order to prevent the introduction into the state of Arizona of these serious pests, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona shall be governed by the following regulations:

**B.A.** Pests: The Pecan nut casebearer, *Aerobasis caryae* (Grote); the Pecan leaf casebearer, *Aerobasis juglandis* (LeB.); Brooming Disease of Walnut. Definition. In addition to the definitions provided in A.R.S. § 3-201 and A.A.C. R3-4-102, the following applies to this Section. Pest means any of the following:

1. Pecan leaf casebearer, *Aerobasis juglandis* (LeBaron);
2. Pecan nut casebearer, *Aerobasis nuxvorella* (Neunzig);
3. Pecan phylloxera, *Phylloxera devastatrix*;
4. The pathogen that causes brooming disease of walnut.

**C.B.** Area under quarantine: All states, districts, and territories of the United States except California.

**C.** Infested areas:

1. On account of *Aerobasis* spp., Chaves, DeBaca, Lea, Roosevelt, and Eddy Counties, New Mexico; and all states and districts east of and including the states of Montana, Wyoming, Colorado, Oklahoma, and Texas. For *Aerobasis* spp.: All states and districts east of and including the states of Montana, Wyoming, Colorado, Oklahoma, and Texas; in New Mexico, the counties of Chaves, DeBaca, Lea, Roosevelt, Eddy, Dona Ana, Otero, and Quay.
2. On account of brooming disease of walnut, all states and districts of the United States, except the state of California:
  2. For pecan phylloxera: Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, and Texas.
  3. For brooming disease of walnut: All states and districts east of and including Montana, Wyoming, Colorado, and New Mexico.

**D.** Commodities covered: All species and varieties of the following trees and all plant parts capable of propagation, except the

nuts. Plant parts include buds, scions, and rootstocks:

1. hickory Hickory and pecans pecan (*Carya* spp.), and
2. all walnuts Walnut and butternut (*Juglans* spp.); trees, and any parts of such trees for propagative purposes, except the nuts.

**E.** Restrictions:

1. Walnut trees and parts thereof for propagation from certain areas: On account of brooming disease of walnut, all species and varieties of walnut trees and budwood or scions thereof for propagation (except nuts) imported, shipped, or in any manner brought into the state of Arizona from any point in the United States east of and including the states of Montana, Wyoming, Colorado, and New Mexico is prohibited.
2. Walnut trees, budwood, and scions produced in western states. All species and varieties of walnut trees and budwood or scions thereof produced in and shipped from any quarantined state west of the states of Montana, Wyoming, Colorado, and New Mexico, will be admitted into the state of Arizona provided each lot or shipment thereof is accompanied by an official certificate issued by the authorized agricultural inspector of the state of origin, affirming that brooming disease of walnut is not known to occur in the state where produced and that such commodities contained therein are a product of said state, also setting for the amount and kind of commodities covered by said certificate.
3. Hickory and pecan trees, budwood, and scions admitted under permit and destination treatment. Except as provided in subsection (E)(4) hereof, bare rooted trees, budwood, or scions of hickory and pecan grown in or shipped from the area under quarantine on account of *Aerobasis* spp., will be admitted into the state of Arizona only provided a permit has been first secured from the State Entomologist and subject to such disinfection or treatment, method of transportation, and limitations as to size and quantity as the Director (State Entomologist) may designate therein. (Permits will designate terminal points of delivery where treatment facilities are available). Persons contemplating the importing into this state of such restricted products as herein provided shall first make application to the Director (State Entomologist) for a permit to do so, stating in the application the name and address of the shipper, the locality where the trees, budwood, or scions were grown; the amount, size, and kind of trees, budwood, or scions it is desired to import, and the name and address of the importer in this state to whom the permit should be sent.

**Notices of Final Rulemaking**

4. ~~Hickory and pecan trees, budwood, and scions admissible without permit if treated at origin. Bare-rooted trees, budwood, or scions of hickory and pecan, grown in or shipped from the area under quarantine on account of *Aerobasis* spp., will be admitted into the state of Arizona provided same have been treated in accordance with one of the procedures specified under subsection (G) and are accompanied by a certificate issued by a duly authorized inspection official of the state of origin, certifying that such commodities were treated under his personal supervision.~~
1. The commodities listed in subsection (D)(1) shall be admitted into Arizona:
  - a. From the infested area prescribed in subsections (C)(1) and (C)(2) if treated at origin, provided each lot or shipment is accompanied by a certificate issued by the origin state Department of Agriculture affirming the commodity has been treated in accordance with subsection (F);
  - b. From an area under quarantine outside the infested area, provided each lot or shipment is accompanied by a certificate issued by the origin state Department of Agriculture affirming that the commodities originated in a county not known to be infested with the pests listed in subsections (A)(1), (A)(2), and (A)(3).
2. The commodities listed in subsection (D)(2) shall be:
  - a. Prohibited from entering Arizona from the infested area prescribed in subsection (C)(3);
  - b. Admitted into Arizona from an area under quarantine outside the infested area prescribed in subsection (C)(3), provided each lot or shipment is accompanied by a certificate issued by the origin

state Department of Agriculture affirming:

- i. Brooming disease is unknown in the origin county, and
  - ii. The amount and kind of commodity in the shipment.
- F. ~~Disposition of violations: Any quarantine commodity arriving in Arizona in violation of this quarantine order shall be immediately sent out of the state, or destroyed, at the option and expense of the owner or owners, his or their responsible agents, and under the direction of the Entomologist or his or her inspectors.~~
- G.F. Treatments:
1. Atmospheric fumigation in an approved chamber with methyl bromide for a period of 4 hours using: Methyl bromide fumigation at normal atmospheric pressure, with circulations maintained for 30 minutes, as follows:
    - 2 lbs. per 1,000 cu. ft. for 4 hours at 70°F. or above more
    - 3 lbs. per 1,000 cu. ft. for 4 hours at 60-69°F.Circulations must be maintained for a period of 30 minutes after complete introduction of the gas. Fumigation shall not be used on Budwood and Scions.
  2. A hot water dip bath treatment at 140° Fahrenheit F. or more for a minimum period of 30 seconds. Water temperature must be maintained at or above 140° Fahrenheit.
  3. Any other treatment approved by the Associate Director.
- G. Any commodity listed in subsection (D) arriving in Arizona in violation of this Section shall, under the direction of the Department, be immediately sent out of the state, treated, or destroyed at the expense of the owner or the owner's representative.
- H. General rules: See "General Rules and Definitions, Article 1".